

DAY WORKER ISSUE

FREQUENTLY ASKED QUESTIONS

In August, the Herndon Town Council approved a conditional use permit for Project Hope & Harmony to manage a temporary, regulated day worker site at the former Herndon Police Station located at 1481 Sterling Road. Project Hope & Harmony is a non-profit organization comprised of representatives from local social service organizations, churches, and the business community. The site is temporary, with the conditional use permit up for renewal in two years and valid only up to five years. Even though the day worker project has been widely publicized in the local and national media, it is important to ensure that residents have the facts regarding this complex and challenging issue – why a regulated day worker site is a reasonable solution and how it will operate. The following are frequently asked questions and answers:

Why should we have a regulated day worker site?

The phenomenon of day workers is a challenge facing numerous communities across the country, not just the Town of Herndon. Day workers will be here as long as there is a demand for lower wage workers. For almost 10 years, Town officials have attempted to respond to community concerns regarding the large number of men who gather for day work in the area near the 7-Eleven at Alabama Drive and Elden Street. This is an impractical location due to the high volume of pedestrian and vehicular traffic associated with day worker activity. Even though there has been no serious crime related to the Herndon day workers, residents have complained about individuals rushing vehicles, causing excessive trash, intimidating patrons, and urinating and drinking in public. Workers and contractors at the regulated site can be managed in an orderly fashion, and the activity will be removed from public sidewalks and streets at the busy intersection of Alabama and Elden. A regulated site also will make it easier to identify individuals who “hang out” and commit nuisance crimes such as drinking in public in the area of the 7-Eleven.

Why was the old Herndon Police Station selected?

The availability of land in Herndon is one of the most critical barriers to solving the day worker problem. Town staff began working in 1998 to find an alternative to the 7-Eleven location. In 2001, the Community Relations Working Group – a coalition of more than 100 residents, business owners and day workers – was established to look at alternatives. A number of locations were explored (including churches, parks, the Neighborhood Resource Center and commercial property); none were available. In 2004, Project Hope & Harmony (PH&H) worked with a Realtor to explore possible site locations. That search included commercial space, which is extremely expensive in this area. The Herndon Police Station provided the only alternative for this temporary use.

What is the agreement for use of Town property?

Project Hope & Harmony entered into a licensing agreement with the Town and is paying the Town for use of the parking lot of the old police station site. Any site improvements, including the trailer, shelter, bike racks, etc. are being paid for by Project Hope & Harmony.

Is the Town providing the \$170,000 in funding for the day labor site?

No. These funds will be provided by Fairfax County to Project Hope & Harmony.

Why can't the problem be solved by arresting day workers for loitering or trespassing?

The U.S. Supreme Court has held that general anti-loitering ordinances are not enforceable. If there were a Town anti-loitering law, it would only be effective for loitering associated with criminal activity. The police department believes that a loitering law would be redundant because the Town already has the power to address criminal activity. The police can enforce trespassing prohibitions on private property at the request of the property owner.

Some of the day workers are illegal immigrants. Why can't the police or immigration authorities arrest them when they gather for work?

Immigration enforcement is the responsibility of federal authorities, not the Herndon Police. Town officials met with a representative of the Bureau of Immigration and Customs Enforcement (ICE) in March 2003. They were told that, because ICE has a limited number of agents in the region, it relies on leads and only goes after major players such as organizers of immigrant smuggling rings or gangs.

ICE can enter into agreements with local jurisdictions to train officers to enforce immigration law. However, such agreements have been initiated only with state governments in Florida and Alabama. In September 2003, the Virginia Attorney General's Office explained ICE's position on certifying local police departments for this purpose, citing factors such as the need to have adequate jail space to house detainees and the significant expense to ICE in training officers, as reasons why only large departments have been accepted into the program. **The Virginia State Police decided against proceeding with such an agreement.**

Isn't it illegal to hire someone for work without proper documentation?

It is the responsibility of employers to ensure that workers have proper documentation. However, this requirement does not apply when a person is hired to do a day's work, which is the reason many residents and contractors hire day workers. PH&H will inform contractors and day workers of their legal obligations at the regulated site.

Why can't the Virginia Employment Commission be at the site to guarantee only workers with documentation are matched with contractors?

Town officials met with representatives of the VEC to discuss the day worker employment situation. The VEC explained that it does not check documentation to verify eligibility to work.

How can the site continue to exist since the new Virginia law took effect in January that prohibits governments from funding social services to illegal immigrants?

There are varying interpretations of whether this law applies to the county funds allocated to PH&H for management of a day worker site. PH&H is working toward operating entirely with private donations.

How is the Town going to stop workers from gathering at the old 7-Eleven site?

This will be accomplished through an Anti-Solicitation Ordinance, Zoning Ordinance and enforcement of trespassing laws. Under the recently-adopted Anti-Solicitation Ordinance, day worker activity is prohibited at any location other than the regulated site. According to constitutional law, an approved, regulated day worker site must be established in Town before an Anti-Solicitation Ordinance can be enacted.

The Town is working cooperatively with the business owners in and around the Alabama and Elden Street area to explain the Anti-Solicitation Ordinance and to enforce trespassing laws.